

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1291

AN ACT to amend the Indiana Code concerning courts and court officers.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 33-23-3-5, AS AMENDED BY P.L.246-2005, SECTION 220, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) A senior judge is entitled to the following compensation:

(1) For each of the first thirty (30) days of service in a calendar year, a per diem of **fifty one hundred** dollars (~~\$50~~) (**\$100**).

(2) Except as provided in subsection (c), for each day the senior judge serves after serving the first thirty (30) days of service in a calendar year, a per diem of two hundred **fifty** dollars (~~\$200~~) (**\$250**).

(3) Reimbursement for:

(A) mileage; and

(B) reasonable expenses, including but not limited to meals and lodging, incurred in performing service as a senior judge; for each day served as a senior judge.

(b) Subject to subsection (c), the per diem and reimbursement for mileage and reasonable expenses under subsection (a) shall be paid by the state.

(c) The compensation under subsection (a)(2) must be paid by the state from funds appropriated to the supreme court for judicial payroll. If the payroll fund is insufficient to pay the compensation under subsection (a)(2), the supreme court may issue an order adjusting the

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compensation rate.

(d) A senior judge appointed under this chapter may not be compensated as a senior judge for more than one hundred (100) total calendar days during a calendar year.

SECTION 2. IC 33-39-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) As used in this chapter, "senior prosecuting attorney" means a person who:

- (1) was employed for at least eight (8) years as a prosecuting attorney or chief deputy prosecuting attorney; and
- (2) files an affidavit requesting designation as a senior prosecuting attorney in the circuit court **and each superior court** in a county in which the person is willing to serve as a senior prosecuting attorney.

(b) An affidavit filed under subsection (a) must contain the following:

- (1) The name of the person filing the affidavit.
- (2) The person's attorney number issued by the supreme court.
- (3) The length of time the person served as a chief deputy prosecuting attorney or prosecuting attorney.
- (4) The name of any county in which the person served as a chief deputy prosecuting attorney or prosecuting attorney.

(c) The circuit **or superior** court shall promptly forward each affidavit received under this section to the prosecuting attorneys council of Indiana.

SECTION 3. IC 33-39-1-6, AS AMENDED BY P.L.222-2005, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) Special prosecutors may be appointed under this section or in accordance with IC 4-2-7-7.

(b) A circuit or superior court judge:

- (1) shall appoint a special prosecutor if:
  - (A) any person other than the prosecuting attorney or the prosecuting attorney's deputy files a verified petition requesting the appointment of a special prosecutor; and
  - (B) the prosecuting attorney agrees that a special prosecutor is needed;
- (2) may appoint a special prosecutor if:
  - (A) a person files a verified petition requesting the appointment of a special prosecutor; and
  - (B) the court, after:
    - (i) notice is given to the prosecuting attorney; and
    - (ii) an evidentiary hearing is conducted at which the prosecuting attorney is given an opportunity to be heard;

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finds by clear and convincing evidence that the appointment is necessary to avoid an actual conflict of interest or there is probable cause to believe that the prosecutor has committed a crime;

- (3) may appoint a special prosecutor if:
  - (A) the prosecuting attorney files a petition requesting the court to appoint a special prosecutor; and
  - (B) the court finds that the appointment is necessary to avoid the appearance of impropriety; ~~and~~
- (4) may appoint a special prosecutor if:
  - (A) an elected public official, who is a defendant in a criminal proceeding, files a verified petition requesting a special prosecutor within ten (10) days after the date of the initial hearing; and
  - (B) the court finds that the appointment of a special prosecutor is in the best interests of justice; **and**
- (5) shall appoint a special prosecutor if:**
  - (A) a previously appointed special prosecutor:**
    - (i) files a motion to withdraw as special prosecutor; or**
    - (ii) has become incapable of continuing to represent the interests of the state; and**
  - (B) the court finds that the facts that established the basis for the initial appointment of a special prosecutor still exist.**

**The elected prosecuting attorney of the appointing jurisdiction shall receive notice of all pleadings filed and orders issued under this subdivision.**

- (c) Each person appointed to serve as a special prosecutor:
  - (1) must consent to the appointment; and
  - (2) must be:
    - (A) the prosecuting attorney or a deputy prosecuting attorney in a county other than the county in which the person is to serve as special prosecutor; or
    - (B) except as provided in subsection (d), a senior prosecuting attorney.
- (d) A senior prosecuting attorney may be appointed in the county in which the senior prosecuting attorney previously served if the court finds that an appointment under this subsection would not create the appearance of impropriety.
- (e) A person appointed to serve as a special prosecutor has the same powers as the prosecuting attorney of the county. However, the appointing judge shall limit scope of the special prosecutor's duties to

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include only the investigation or prosecution of a particular case or particular grand jury investigation.

(f) The court shall establish the length of the special prosecutor's term. If the target of an investigation by the special prosecutor is a public servant (as defined in IC 35-41-1-24), the court shall order the special prosecutor to file a report of the investigation with the court at the conclusion of the investigation. The report is a public record.

(g) If the special prosecutor is not regularly employed as a full-time prosecuting attorney or full-time deputy prosecuting attorney, the compensation for the special prosecutor's services:

(1) shall be paid to the special prosecutor from the unappropriated funds of the appointing county; and

(2) may not exceed:

(A) ~~a per diem equal to an hourly rate based upon~~ the regular salary of a full-time prosecuting attorney of the appointing circuit; ~~and~~

(B) travel expenses and reasonable accommodation expenses actually incurred; **and**

**(C) other reasonable expenses actually incurred, including the costs of investigation, discovery, and secretarial work, if:**

**(i) before incurring the other reasonable expenses described in this clause, the special prosecutor submits an application to the court to receive the other reasonable expenses; and**

**(ii) the court approves the expenses.**

**The amount of compensation a special prosecutor receives for services performed during a calendar day under subdivision (2)(A) may not exceed the amount of compensation a full-time prosecuting attorney would receive in salary for the calendar day.**

(h) If the special prosecutor is regularly employed as a full-time prosecuting attorney or deputy prosecuting attorney, the compensation for the special prosecutor's services:

(1) shall be paid out of the appointing county's unappropriated funds to the treasurer of the county in which the special prosecutor regularly serves; and

(2) must include a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing circuit, travel expenses, and reasonable accommodation expenses actually incurred.

(i) The combination of:

(1) the compensation paid to a senior prosecuting attorney under

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this chapter; and

(2) retirement benefits that the person appointed as a senior prosecuting attorney is receiving or entitled to receive; may not exceed the minimum compensation to which a full-time prosecuting attorney is entitled under IC 33-39-6-5.

(j) A senior prosecuting attorney appointed under this chapter may not be compensated as senior prosecuting attorney for more than one hundred (100) calendar days in total during a calendar year **if the senior prosecuting attorney receives retirement benefits during the calendar year. However, if the senior prosecuting attorney does not receive retirement benefits during a calendar year, the senior prosecuting attorney may be compensated as a senior prosecuting attorney for not more than two hundred (200) calendar days in total during the calendar year.**

SECTION 4. IC 33-39-2-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7. (a) A prosecuting attorney may establish and administer a youth mentoring program.**

**(b) To establish or administer a youth mentoring program described in subsection (a), a prosecuting attorney may:**

- (1) establish and administer an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;**
- (2) provide staff and material support to the organization; and**
- (3) receive and expend charitable contributions, appropriations, and federal, state, local, or private grants.**

**(c) The prosecuting attorney shall provide an annual report to the county fiscal body concerning the youth mentoring program established under subsection (a). The youth mentoring program is subject to audit by the state board of accounts.**

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

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